

28

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

United States District Court
Southern District of Texas
FILED

DEC 16 2003

Michael N. Milby
Clerk of Court

LUIS ALEJANDRO GARZA *
 *
VS. * CIVIL ACTION NO. B-02-154
 * FEDERAL TORT CLAIMS ACT
THE UNITED STATES OF *
AMERICA *

**PLAINTIFF'S MOTION TO COMPEL AND MOTION FOR
IN CAMERA INSPECTION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, LUIS ALEJANDRO GARZA, Plaintiff in the above-entitled and numbered cause, and files this his Motion to compel and Motion for *in camera* inspection and in support thereof would respectfully show as follows:

1.

Plaintiff propounded interrogatories and requests for production to Defendant United States of America. Defendant objected to some of Plaintiff's discovery requests and identified certain documents it was withholding based upon privilege. Plaintiff asks the court to order the government to produce the items it is withholding and conduct an in camera inspection to determine whether such documents should be produced, in whole, or in part. Those documents have been identified as:

a) An email dated February 13, 2003;

- b) A memorandum dated February 7, 2001;
- c) Nine separate memoranda dated April 17, 2001; and
- d) One hand written note entitled "Texas gangs".

2.

Plaintiff also made discovery requests pertaining to "similar incidents" defined as "assaults by multiple inmates upon one or more inmates at or around the recreation yard at the Three Rivers facility during the past ten years." This information is calculated to lead to admissible evidence in that it could show that Defendant was aware of the risk involved, identify employees reprimanded for failing to follow rules regarding inmates gathering into large groups in the recreational yard and may disclose memoranda which may address the best way to deal with the problem of violence by large groups in the recreation yard.

3.

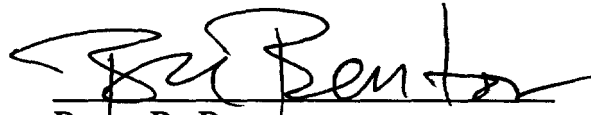
In addition, Plaintiff asked the government to produce all relevant photographs and videotapes. Records produced by the government indicate that in the prosecution of the assailants of this assault that numerous still photos were obtained from videotapes and used in that prosecution. The government has failed to produce these photographs or account for their existence. In addition, the government has

produced a scanning video which rotates from camera to camera (approximately 14 cameras) throughout the Three Rivers facility. Plaintiff needs the government to produce the videotape from the camera or cameras capturing the specific area where Plaintiff was assaulted as well as the basketball and handball courts where the forty-sum inmates gathered prior to their raid upon the victims. The government has the means to isolate these cameras and provide a videotape of just those cameras but has failed to do so. This information would be critical as it would clearly show that these inmates had been gathering at the handball and basketball courts for quite a long time without being separated per specific post orders which ultimately led to Plaintiff being severely beaten.

4.

WHEREFORE, Plaintiff prays that after notice and hearing that Defendant be compelled to produce the items described herein and that the Court, after reviewing same, order Defendant to produce the discovery requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Barry R. Benton", written over a horizontal line.

Barry R. Benton
284 Ebony Avenue
Brownsville, Texas 78520
(956) 546-9900 Telephone
(956) 546-9997 Facsimile
State Bar No. 02176500
Federal I.D. No. 3968
ATTORNEY IN CHARGE FOR
PLAINTIFF, LUIS ALEJANDRO GARZA

CERTIFICATE OF CONFERENCE

I CERTIFY that an attempt has been made to resolve the matters described in the foregoing motion without the necessity of Court intervention and same has failed.

A handwritten signature in black ink, appearing to read "Barry R. Benton", written over a horizontal line.
BARRY R. BENTON

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of December, 2003, a true and correct copy of the above and foregoing Plaintiff's Motion to Compel and Motion for *In Camera* Inspection has been hand-delivered to attorney of record, to wit:

Ms. Nancy L. Masso
Assistant United States Attorney
600 E. Harrison Street, #201
Brownsville, Texas 78520

Via Hand-delivered


BARRY R. BENTON